



**UNITED STATES OF AMERICA  
DEPARTMENT OF  
TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 10<sup>th</sup> day of February, 2003

Notice of

**MIDWAY AIRLINES CORPORATION**

of intent to resume operations pursuant to section 204.7  
of the Department's Aviation Economic Regulations

**Served: February 13, 2003**

**Docket OST-02-13580**

**ORDER CONFIRMING ORAL ACTIONS  
AUTHORIZING RESUMPTION OF OPERATIONS**

**Summary**

By this order, we are confirming our oral action authorizing Midway Airlines Corporation (Midway) to resume its scheduled passenger operations.

**Background**

On July 17, 2002, Midway, a certificated air carrier based in Morrisville, North Carolina, suspended all flight operations in order to reconfigure its aircraft fleet and modify its operations. As a result of this cessation, Midway's certificate authority was automatically suspended pursuant to the provisions of section 204.7 of the Department's Aviation Economic Regulations (14 CFR 204.7). Under that section, in order for Midway to recommence certificated operations, it was required to file a notice at least 45 days in advance of the date it intended to resume service and have its fitness re-established.<sup>1</sup>

On October 9, 2002, Midway filed notice of its intent to resume operations on or about December 1, 2002. This notice was accompanied by the information we required to redetermine Midway's fitness to recommence operations.<sup>2</sup> While Midway did not intend

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<sup>1</sup> By letter dated July 18, 2002, the Department notified Midway of the impact of section 204.7 on its certificate authority.

<sup>2</sup> Midway requested that certain of the fitness information filed be granted confidential treatment pursuant to 14 CFR 302.12 (Rule 12). In support of its request, Midway noted that the information set forth included non-public financial data and future operating plans, which, if released, could

to resume operations before December 1, 2002, it asked the Department to act on its resumption notice as soon as possible so that Midway could proceed with its plans. Midway indicated that it was changing its operations in order to provide service as a US Airways Express carrier using 50-seat Canadair CRJs under a Regional Jet Service Agreement with US Airways. This action was being taken because Midway's independent stand-alone operations utilizing B737 aircraft were resulting in significant continuing losses for the company.

### Decision

After reviewing the fitness information provided by Midway, we determined that the company would meet our fitness standards provided its resumed operations were all conducted with small (*i.e.*, under 60-seat) aircraft pursuant to its Regional Jet Service Agreement with US Airways, or under a similar cost-plus service agreement with another certificated air carrier that would be responsible for, at a minimum, all passenger-related reservations, check-in and ticketing, and re-accommodation/refund functions. Further, we found that it was in the public interest to orally approve Midway's request to resume operations, subject to conditions,<sup>3</sup> so that it could make all necessary preparations to resume operations in a timely manner. On October 16, 2002, we orally authorized Midway to recommence operations. Given that Midway would not be resuming operations immediately and that further action was required by both parties to the Regional Jet Service Agreement prior to any resumption of operations, we stated that our oral action would terminate automatically on January 1, 2003, unless Midway had actually recommenced revenue flight operations prior to that date. On December 17, 2002, Midway filed a request for a short extension of time in which to recommence operations. In this request, Midway noted that it was in the final stages of resuming scheduled service and expected to do so in

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cause it substantial harm. Under Rule 12, the Department evaluates requests for confidential treatment in accordance with the standards of disclosure found in the Freedom of Information Act (FOIA) (5 U.S.C. 552). Under Exemption 4 of FOIA, business information may be withheld from disclosure if it is "(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential." (*Gulf & Western Industries, Inc. v. U.S.*, 615 F.2d 527, 529 (D.C. Cir. 1979).) The information contained in Midway's filings clearly meets the first two requirements. The only question, therefore, is whether the information is privileged or confidential--whether "disclosure of the information is likely to have either of the following effects: (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." (*National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).) Furthermore, to be privileged or confidential, the information must not be of the type that is usually released to the public. (*Gulf & Western Industries, Inc. v. U.S.*, *supra* at 530.) We agree with Midway that premature release of its future operating plans and the detailed financial information reflecting these proposed operations could cause substantial harm to its competitive position through the release of proprietary financial information. Therefore, we will grant Midway's request for confidential treatment of this information.

<sup>3</sup> In addition to conditioning our finding of fitness to operations conducted with small aircraft pursuant to Midway's Regional Jet Service Agreement with US Airways, or under a similar cost-plus service agreement with another certificated air carrier, we stated that our approval for Midway to resume actual revenue flight operations was contingent upon its compliance with all safety requirements set by the Federal Aviation Administration (FAA).

early January 2003. However, since the Department's oral approval required Midway to actually begin revenue operations prior to January 1, 2003, it would need a short extension of time in which to do so. Specifically, Midway requested that it be allowed until January 15, 2003 in which to resume operations. This request was orally granted on December 18, 2002.

Midway resumed flight operations on January 1, 2003. All of its operations are now conducted under the Regional Jet Service Agreement with US Airways under the trade name US Airways Express.

In light of the above, by this order, we confirm our oral actions of October 16 and December 18, 2002, finding Midway fit to resume certificated operations, subject to conditions.

**ACCORDINGLY**, Acting under authority assigned by the Department in its Regulations, 14 CFR 385.12(a)(5)(iv) and (b)(1):

1. We confirm our oral action of October 16, 2002, granting the application of Midway Airlines Corporation for authority to resume certificated operations, subject to conditions.<sup>4</sup>
2. We confirm our oral action of December 18, 2002, extending the timeframe for Midway to recommence operations from December 31, 2002, until January 15, 2003.
3. We grant the request of Midway Airlines Corporation to withhold from public disclosure all of the supporting fitness information submitted pursuant to Rule 12.
4. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

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<sup>4</sup> The conditions set were that Midway (1) conduct its resumed operations with only small aircraft pursuant to its Regional Jet Service Agreement with US Airways (or under a similar cost-plus agreement with another certificated air carrier), (2) receive appropriate approval from the FAA prior to conducting any air transportation operations, and (3) recommence flight operations prior to January 1, 2003.

The action confirmed in this order was effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

**Randall D. Bennett**  
Director  
Office of Aviation Analysis

(SEAL)

*An electronic version of this document is available on the World Wide Web at:  
<http://dms.dot.gov>*

## SERVICE LIST FOR MIDWAY AIRLINES

Attachment A

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